cause of such failure. He rang up the Waterworks Department and some officers of that Department carried out an inspection as a result of which the Waterworks Engineer wrote a letter dated 2nd January, 1963 stating that the common pipe serving the premises was badly corroded and recommending that early action be taken to have the whole of the communication pipe replaced through a P.W.D. registered plumber. There was considerable delay on the part of the defendant to have the corroded pipe replaced. It would seem clear that she took the whole matter lightly until this Court made an interim order on 20th February, 1963 requiring her to restore the water supply. The corroded pipe was finally replaced on 17th March, 1963. In the circumstances the plaintiffs are entitled to a perpetual injunction against the defendant requiring her to keep the water supply open and for such damages as they suffered as a result of the lack of water from the date by which the defendant could reasonably have had the corroded pipe replaced to the date of restoration of the water supply.

As regards damages, the first plaintiff says that it cost her $2 per day to have water transported from elsewhere for her use in her hair-dressing saloon on the premises. This claim is not unreasonable in view of the fact that she must have required considerable quantities of water by reason of the fact that there was very little water in the taps. She further claims that she suffered a loss of about $50 per day, being the average daily takings in her saloon. However, evidence was led to show that somebody other than the first plaintiff was running the hair-dressing saloon on the premises from the 1st of November, 1962 to about the 3rd of January, 1963. I accept that evidence in spite of the first plaintiff's denial that somebody else was carrying on business there. Moreover, if she was getting water from elsewhere during the relevant period, there was no reason for her to completely shut down her hair-dressing saloon, although I agree that without running water she could not possibly shampoo her customers' hair. On going through her accounts, I find that her average takings for this part of her business were approximately $15 per day. She is entitled to claim that sum as her daily special damages.

I would say that in all the circumstances of the case the defendant should have had the corroded pipe replaced by 15th January, 1963 at the very latest. I would therefore allow damages from 16th January to 16th March, 1963, a period of 60 days, at $17 per day making a total of $1,020. For all the discomfort and embarrassment which the first plaintiff suffered I would allow general damages in the sum of $400.

There will accordingly be judgment for the plaintiffs in the sum of $1,420 and an order directing the defendant to give the plaintiffs an uninterrupted supply of water and for that purpose to comply with all the regulations of the Waterworks Department. As the plaintiffs have failed in respect of their claim for the sum of $1,500, I would allow three-quarters of the plaintiffs' taxed costs.

Order accordingly.

Solicitors:—*Richard Talalla; S. Y. Chan & Co.*

JAGANATHAN v. PUBLIC PROSECUTOR

[C.A. (Hill Ag. C.J., Barakbah J.A., Ismail Khan J.) June 3, 1963]

[K.L. — F.M. Criminal Appeal No. 11 of 1963]

Penal Code s.300—Murder—Exceptions to s.300—Sudden fight or grave and sudden provocation—Trial judge not directing jury on possible defences—Duty of trial judge in such case.

In a trial for murder it is the duty of the trial judge if the evidence indicates the possible defence of one or more of the exceptions under section 300 of the Penal Code to mention the possible defence or defences to the jury and direct them accordingly.

COURT OF APPEAL (CRIMINAL).

L. P. Thean for the appellants.

H. S. Ong for the respondent.

Hill Ag. C.J.: It is not necessary to go into the details of this trial. The prosecution had at the trial proved that the appellant killed the deceased. This was believed by the jury. The evidence, however indicate the possible defence of one of the four exceptions under section 300 of the Penal Code namely the fourth, which states that culpable homicide is not murder if it is committed without premediation, in a sudden fight, in the heat of passion or under grave and sudden provocation.

We are not suggesting for one moment that this defence was necessarily a good one in the circumstances of this case, but it is quite possible that had the jury's attention been directed to the exception they would not have found the accused guilty of murder. It is by no means impossible that had the learned trial judge told them of this exception they would have had some doubt in their minds and given the accused the benefit of it. Where such a situation arises in the course of a trial it is the duty of the trial judge, to mention the possible defence to the jury and direct them on it. In this instance this was not done.

In the circumstances we feel that we have

no alternative but to quash the conviction for murder. Fortunately we do not have to consider a retrial and we substitute a conviction for culpable homicide not amounting to murder and sentence the accused to ten years imprisonment from the date of arrest.

Conviction substituted.

Solicitors:—*Shook Lin & Bok.*

BAN HIN LEE BANK LTD. v. TAN KHOO SOEI & ORS.

[O.C.J. (Buttrose J.) June 6, 1963]

[Singapore — Suit No. 1598 of 1960]

Landlord and Tenant—Injunction to restrain trespass—Monthly tenant—Notice to quit—Failure to comply with—Creation of statutory tenancy—Death of statutory tenant—Landlord having no knowledge of—Subsequent acceptance of rent—Administrator purporting to sub-let part of premises—Whether new contractual tenancy created.

When a monthly tenant fails to comply with a valid notice to quit a statutory tenancy is created. A statutory tenancy is merely a personal right to possession or occupation of the premises and such tenancy is extinguished at the death of the statutory tenant and nothing passes to his estate. The mere acceptance of rent by the landlord from the person then in occupation of the premises does not necessarily constitute a new tenancy.

Cases referred to:—

(1) *Davies* v. *Briston* [1920] 3 K.B. 428.
(2) *Clarke* v. *Grant* [1949] 1 All E.R. 768.
(3) *Marcroft Wagons Ltd.* v. *Smith* [1951] 2 All E.R. 275.

ACTION.

A. P. Godwin for the plaintiff.

A. Muthuswamy for the defendants.

Buttrose J. (delivering oral judgment): In this action the plaintiff claims an injunction restraining the defendants and their servants or agents from trespassing on its property at 52 Circular Road and damages for such trespass. The plaintiff bank also seeks a declaration that the right, title and interest of K. Shaik Abdul Kadir in the premises terminated on his death. The plaintiff also claims possession.

The facts as I find them, clearly established by the evidence, are briefly these. The premises in question, No. 52 Circular Road are next door to the plaintiff bank. The premises were let apparently many years ago before the war to one K. Shaik Abdul Kadir on a monthly tenancy. The premises were used as business premises and the rent, which was always paid in cash, was usually collected by the plaintiff's rent collector and occasionally paid by someone representing the tenant to an official of the bank direct. The receipts were made out in the name of K. Shaik Abdul Kadir. For many many years—as far back even as before the war—the plaintiff bank required vacant possession of these premises in order to expand its business but the outbreak of war prevented the implementation of this expansion scheme. After the cessation of hostilities a Notice to Quit was served on the tenant to vacate by the 31st October 1946 but the tenant refused to comply and proceedings for possession were taken but these were unsuccessful. Rent continued to be paid thereafter by the tenant which was accepted by the bank. This state of affairs continued on until September 1960. The previous month, in August 1960, a member of the bank's staff noticed a document affixed to the door of the premises in question. It turned out to be a Writ of Seizure and Sale against one M. M. Ali of whom the plaintiff had no knowledge. As a result of this the plaintiff immediately consulted its solicitors and rent was refused when next tendered. The letter of 21st September 1960 (page 15 of the Agreed Bundle) was the first intimation that the plaintiff had that K. Shaik Abdul Kadir was not still in occupation of the premises and in fact had died as long ago, according to the evidence as 1947 in India. A second Notice to Quit in January 1951 was issued and served under the misapprehension that K. Shaik Abdul Kadir was still alive and in occupation. In November 1960 the administrator of the estate of K. Shaik Abdul Kadir, deceased purported to sublet part of the premises to the first defendant. A letter before action was sent on the 2nd November 1960 and notice was given to the first defendant on the same date that he would not be recognised as a sub-tenant. Proceedings were commenced by Writ of Summons on the 11th November 1960.

What then is the legal position arising out of these facts? K. Shaik Abdul Kadir's tenancy was determined on the 31st October 1946 by a valid Notice to Quit with which, as I have already said, he did not comply and he remained on in possession of the premises by virtue of the provisions of the Increase of Rent (Restriction) Ordinance, 1939, (No. 35 of 1939) as amended by the Increase of Rent (Restriction) (Amendment) Ordinance, 1941 (No. 30 of 1941) which was the appropriate and material legislation in force at the time. A statutory tenancy was, in my judgment, created and K. Shaik Abdul Kadir became a statutory tenant and continued so to be until the date of his death. Now, a statutory tenant has merely a personal right to possession or occupation of the premises and such tenancy is extinguished at his death and nothing passes to his estate. The fact that after the expiration of a Notice to Quit the tenant makes payment of rent to the landlord which the latter accepts does not necessarily constitute a new tenancy. The